

August 29, 2005

Civil Division-Kent County (739-7641)

Mr. Jeff Bruette
116 Sleepy Hollow Drive, Suite C
Middletown, DE 19709

Re: **Freedom of Information Act Complaint
Against Town of Middletown**

Dear Mr. Bruette:

On June 6, 2005, our Office received your complaint alleging that the Town of Middletown ("the Town") has been violating the open meeting requirements of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA"), by not: (1) giving the public adequate notice of matters to be discussed under the agenda headings "Old Business" and "Unfinished Business"; (2) giving the public adequate notice of matters to be discussed in executive session under the agenda heading "Personnel and Legal Matters"; (3) following the proper procedures for going into executive session; and by (4) allowing members of the public who are not members of the Town Council to attend executive sessions. Your complaint also alleges that the Town violated the public records requirements of FOIA by denying you access to minutes of executive sessions held from May 3, 2004 through April 4, 2005 which you requested.

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By letter dated June 16, 2005, we asked you to "provide us with a specific set of facts about a particular meeting of a public body. Please provide us with the dates of any meeting or meetings of the Town Council within the last six months in which you allege a FOIA violation occurred, and with respect to each meeting or meetings, identify the specific alleged violation (for example, failure to post timely notice of the meeting; discussion of matters not listed in the agenda; or meeting in executive session for a purpose not authorized by law)."

On June 24, 2005, we received additional information from you which was necessary to begin investigating your complaint. By letter dated June 28, 2005, we asked the Town to respond to your complaint by July 11, 2005 (taking into account the July 4, 2005 holiday weekend). We received the Town's response on July 11, 2005.

On July 29, 2005, we asked the Town for additional information, which we received on August 5, 2005.

According to the Town, "the agendas for the meetings clearly give the public sufficient public notice of the matters of public business to be discussed, both under 'Unfinished Business' and 'New Business.' If there is a specific item of 'Unfinished Business' Council intends to discuss, it is annotated under the 'Unfinished Business' section. However, in most instances, when there is no specific item of unfinished business to be addressed, nothing in particular is listed on the agenda but Council and the public are afforded an opportunity to address in general terms, any unfinished business."

As for the agenda item "New Business," the Town responds that it "essentially uses this time on the agenda to allow the public an opportunity to raise whatever new issue they see fit. Consequently, it is not possible for the Town to give any more specific notice regarding what issue

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may arise, other than to record the fact that the opportunity to discuss new business (and old) will be extended to members of the public."

The Town contends "that disclosure of the minutes of the executive sessions would, in fact, defeat the lawful purpose of the executive sessions which include strategy sessions and the rendering of legal advice with respect to potential or pending litigation and sensitive personnel matters. It is the Town's opinion that if it were forced to disclose the minutes of the executive sessions, such disclosure would frustrate the very purpose of the exemptions in 29 *Del. C.* §10004(b)."

In its response, the Town did not address three of the issues raised in your complaint: the sufficiency of the agendas for noticing executive sessions; the procedure for going into executive session; and the attendance of non-Council members at executive sessions. By letter dated July 29, 2005, we asked the Town: "For each executive session, please identify who was in attendance who is not a member of the Council, and his/her job position, title, or capacity."

By letter dated August 5, 2005, the Town Solicitor responded: "I have reviewed the executive session minutes and agree that they do not specifically identify those in attendance other than the Mayor and Council. However, I have discussed this matter with the Mayor and Council, as well as Rae Teel, who keeps the minutes of the meetings. The only people that attended the executive sessions in questions are the Mayor and Council, myself as the Town Solicitor, Morris Deputy as Town Manager, and Rae Teel as Secretary."

Relevant Statutes

FOIA provides that "[a]ll public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate

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public body." 29 *Del. C.* §10003(a).

FOIA exempts from public disclosure, "[s]ubject to subsection (f) of Section 10004 of this title with respect to release of minutes of executive session, any record of discussions held in executive session pursuant to subsections (b) and (c) of Section 10004 of this title." *Id.* §10002(g)(10)

Section 10004(f) of FOIA provides that "minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer." *Id.* §10004(f).

FOIA requires public bodies to "give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings." *Id.* §10004(e)(2).

FOIA defines an "agenda" to be "a general statement of the major issues to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific grounds therefore under subsection (b) of Section 10004 of this title." *Id.* §10001(f).

LEGAL AUTHORITY

A. Minutes of Executive Sessions

You asked the Town for copies of the minutes of executive sessions held by the Town Council at its monthly meetings from May [3], 2004 through April 4, 2005. By letter dated May 24,

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2005, the Town Manager advised you that "[c]opies of the Executive Session minutes will not be made available as they pertain to personnel and legal matters only, and are not subject to public view under the Freedom of Information Act."

FOIA exempts from disclosure the minutes of an executive session "so long as public disclosure would defeat the lawful purpose for the executive session, but not longer." 29 *Del. C.* §10004(f). The Town contends "that if it were forced to disclose the minutes of the executive sessions, such disclosure would frustrate the very purpose of the exemptions in 29 Del. C. §10004(b)."

In earlier opinions there have been occasions where we determined that public disclosure of the minutes of an executive session would not defeat the lawful purpose for executive session because sufficient time had lapsed, *see, e.g., Att'y Gen. Op.* 03-IB05 (Feb. 5, 2003); *Att'y Gen. Op.* 02-IB17 (Aug. 6, 2002), or because the minutes – as written – did not disclose any confidential information. *See Att'y Gen. Op.* 97-IB14 (July 29, 1997) (disclosure of executive session minutes would not defeat the lawful purpose for the executive session "by revealing any details about Red Clay's litigation strategy or the advice received from counsel").

In *Att'y Gen. Op.* 02-IB27 (Nov. 4, 2002), the county council met in private to discuss the purchase of properties, a matter authorized by FOIA for executive session. *See 29 Del. C.* §10004(b)(2). The County contended that public disclosure of the minutes would defeat the lawful purpose of executive session because "the matters addressed in the Executive Session are not concluded and negotiations are ongoing." We agreed, but observed that "[a]t some point after the County has purchased property, the minutes of prior executive sessions regarding the purchase of the property may become subject to FOIA because disclosure would no longer 'defeat the lawful

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purpose for the executive session.'" *Att'y Gen. Op.* 02-IB27 (quoting 29 *Del. C.* §10004(f)).

We have also given the public some deference when it has "articulated reasonable and legitimate reasons why it exercised its discretion not to make [executive session minutes] available." *Att'y Gen. Op.* 01-IB03 (Feb. 16, 2001). In that case, the school district met in private to discuss labor negotiations over a collective bargaining agreement, a subject FOIA authorizes for executive session. *See* 29 *Del. C.* §10004(b)(6). The school district contended that public disclosure of the minutes would defeat the lawful purpose of those executive sessions. When "collective bargaining negotiations are being addressed, strategies, including long term strategies and philosophies of the District regarding negotiations, are frequently included. Thus, to disclose those summaries, both while negotiations are continuing and during periods of time between negotiations, would unfairly disadvantage and adversely affect the District." We agreed and observed that "we will not second-guess the School District's discretionary decision absent a showing of bad faith or disparate treatment."

Under FOIA, "the burden of proof shall be on the custodian of records to justify the denial of access to records." 29 *Del. C.* §10005(c). In this case, we do not believe that the Town has met its burden of proof to justify withholding the executive session minutes you requested. The Town has not articulated reasonable and legitimate reasons why public disclosure of the executive session minutes at this time would defeat any lawful purposes for those executive sessions.

Indeed, the minutes of executive session "would be exempt from disclosure only if the discussions pertained to a lawful purpose for holding the executive session." *Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board*, C.A. No. 1216-K, 1994 WL 274295, at p.13 (Del. Ch., May 18, 1994) (Jacobs, V.C). We are troubled that many of the

matters of public business which the Town discussed in executive session from December 2004 through June 2005 were not authorized for private discussion under FOIA.¹

For each executive session held from December 2004 through June 2005, the agenda listed as the purpose for the executive session "Personnel & Legal Issues." FOIA does not authorize a public body to go into executive session to discuss any "legal" matter. Section 10004(b)(4) authorizes executive session to discuss "collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body." These limitations were designed "to prevent potential abuse" and do not permit a public body "to hold an executive session to receive legal advice about *any* issue or matter." *Chemical Industry Council*, 1994 WL 274295, at p.11.

Our *in camera* review of the minutes of the executive sessions held from December 2004 through June 2005 does not show any discussions of litigation strategy pertaining to pending or potential litigation. We determine that the Town failed to meet its burden of proof to justify withholding any portions of the minutes of executive sessions you requested on the ground that: (1)

¹ For example, the minutes of the February 7, 2005 executive session show that the Council discussed, among other things, the Town's disability insurance policy; granted permission to several employees to attend seminars or review courses; and discussed a yard waste proposal, procedures for handling delinquent accounts, and the hiring of a financial consultant. The minutes of the March 14, 2005 executive session show that the Council discussed, among other things, a proposed procedure for utility payments. The minutes of the May 2, 2005 executive session show that the Council discussed, among other things, rising health insurance premiums. And the minutes of the June 6, 2005 executive session show that the Council discussed, among other things, a grant request for the Peach Festival; your request to reconsider the approval of a conditional use permit for the Cathedral International Church; and temporary sewer space needs. In all of the minutes of executive session we reviewed, we found only one matter which FOIA clearly authorized for private discussion (June 6, 2005 "the acquisition of the Calotex property on Haveg Road). *See* 29 Del. C. §10004(b)(2) ("[p]reliminary discussions on site acquisitions").

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they pertain to litigation strategy; and (2) public disclosure at this time would defeat that lawful purpose for executive session.²

FOIA's personnel exemption for executive session does not authorize a public body to discuss in private anything having to do with a "person," but rather is limited to discussion of "the names, competency and abilities of individual employees." 29 Del. C. §10004(b)(9). Our *in camera* review of the executive session minutes for December 2004 through June 2005 shows that for the most part any discussion of Town employees involved matter-of-fact announcements about resignations, new hires, continuing education, and the like.

We determine that the Town has failed to meet its burden of proof to justify withholding any portions of the minutes of executive sessions you requested on the grounds that: (1) they pertain to names, competency and abilities of individual employees; and (2) public disclosure at this time would defeat that lawful purpose for executive session.

As remediation, we direct the Town to make copies of the minutes of executive session held by the Council from December 2004 through April 2005 available to you within ten days of the date of this letter.³ We do not take this step lightly because it has been our usual practice not to second

² Our *in camera* review of minutes of executive sessions held December 2004 through June 2005 reveals only a handful of matters that related to litigation. See March 14, 2005 minutes (Department of Labor's Final Determination and Right To Sue Notice; hiring private law firm to represent the Town in the Wal-Mart lawsuit; notice of depositions); and May 2, 2005 minutes (notice of depositions in Kohl rezoning lawsuit). The discussion of those pending or potential litigation matters does not appear to have involved any "[s]trategy sessions" the public disclosure of which "would have an adverse effect on the bargaining or litigation position of the public body." 29 Del. C. §10004(b)(4).

³ We note that you requested from the Town copies of minutes of executive sessions from May 3, 2004 to April 4, 2005. We do not direct the Town to produce copies of the minutes of executive sessions from May through November 2004 because we did not review them, consistent with the historical practice of our Office not to entertain FOIA complaints relating to matters that occurred more than six months prior to our receiving the citizen's

guess the decision by a public body whether public disclosure of the minutes of an executive session would defeat the lawful purpose of the executive session. We believe remediation is compelled because the minutes of the executive sessions show that the Town discussed many matters of public business which were not authorized by FOIA for private discussion. "Because no lawful statutory purpose for most of those discussions has been demonstrated, it follows that the [Town] was not justified withholding [executive session minutes] of those discussions." *Chemical Industry Council*, 1994 WL 274295, at p.13. Even if the Town could demonstrate a lawful statutory purpose for some of the matters discussed in executive session, the Town has not articulated reasonable and legitimate reasons why disclosure of those portions of the minutes at this time would defeat the lawful purpose for executive session.

B. Adequacy of Agendas – Matters of Public Business

In *Att’y Gen. Op. 03-IB17* (July 31, 2003), we determined that a public body cannot "use the general rubric of ‘new business’ or ‘old business’ to satisfy the requirements for an agenda under FOIA. . . . If the legislature intended that ‘new business’ or ‘old business’ without further detail would constitute sufficient notice to the public, then it would not have been necessary for the legislature to specifically authorize a public body to add items to the agenda ‘which arise at the time of the public body’s meeting.’" *Att’y Gen. Op. 03-IB17* (quoting 29 *Del. C.* §10004(e)(2)).

complaint. *See Att’y Gen. Op. 02-IB10* (Apr. 24, 2002) ("As a general rule, for fairness and practical reasons, we do not investigate events that occurred more than six months before we received the complaint."). You made your public records request to the Town in May 2005, and we received your FOIA complaint on June 6, 2005. For us to determine whether the Town has grounds not to disclose minutes of executive sessions held more than six months prior to your complaint would require us to review the lawful purposes for each of those executive sessions, which we decline to do for fairness and practical reasons.

We recognized, however, "that a public body cannot entirely control what matters citizens may try to raise during a public commentary period at a meeting. But when a citizen raises a substantial matter not specifically noticed for public discussion, there must be a compelling reason why the issue cannot wait for discussion until a later meeting to allow for proper notice under FOIA." *Att'y Gen. Op.* 03-IB17.

Our concern in that earlier opinion was that "vaguely worded descriptions" in the agenda "invite discussions and actions on any topic." *Id.* In that case, during the "new business" portion of the agenda, a citizen raised the issue of whether a council member forfeited his office under the town charter for failure to attend meetings. The town council then voted in favor of forfeiture and appointed another person to the council. We determined that the town violated the notice requirements of FOIA because the "forfeiture of office issue was not a natural extension of discussion of a matter of public business listed in the agenda for the June 2, 2003 meeting. The Town has not advanced any compelling reason why it could not have deferred the issue until a later meeting to allow for proper notice under FOIA."

We did not mean to suggest in *Att'y Gen. Op.* 03-IB17 that the agenda requirements of FOIA prohibit a public body from discussing matters at a meeting under the heading of "New Business." Like any public commentary period, "New Business" can serve important functions: citizens can bring issues and concerns to the attention of the public body; and the public body can inform the public of matters that will be addressed in the future.

We have reviewed the public session minutes of the Town Council meetings from December 2004 through June 2005. The minutes show that under the heading "New Business" any discussion was limited to announcements of future events, questions or comments by citizens, and

the like. There is no evidence in the record that a substantial matter of public business was discussed during the "New Business" portion of any meeting.

We determine that the Town did not violate the agenda requirements of FOIA by discussing informational matters or hearing comments from citizens under the heading of "New Business" during meetings held from December 2004 through June 2005. We caution the Town, however, that "when a citizen raises a substantial matter not specifically noticed for public discussion, there must be a compelling reason why the issue cannot wait for discussion until a later meeting to allow for proper notice under FOIA." *Att'y Gen. Op.* 03-IB17.⁴

We have more concerns about the agenda heading "Old Business" (or, as used by the Town, "Unfinished Business"). If a matter of public business had been the subject of discussion at a previous public meeting and is to be discussed again, there is no reason why the public body cannot be more specific in the agenda. Otherwise, a public body could re-visit any issue discussed at any previous meeting.

The agendas for the Town's meetings from December 2004 through June 2005 show that they all listed for discussion "Unfinished Business." The minutes show either that nothing was discussed under the heading of "Unfinished Business" at the meeting, or the discussion under "Unfinished Business" was informational only. For example, at the February 7, 2005 meeting, a citizen thanked the Council for installing a traffic light near his home, and the Mayor informed the gathering that more sidewalk easements were being signed.

⁴ In *Att'y Gen. Op.* 03-IB17, a citizen raised the forfeiture of office issue during the "New Business" portion of the agenda. Rather than defer discussion of the substantial matter of public business until a future meeting, the town council not only discussed it but voted to remove a council member for office and appoint another person in his place.

We recognize that the Town, by allowing expansive opportunity for public comment, is attempting to be open and accessible to its citizens. We caution the Town, however, that it may be a violation of FOIA to discuss any more substantial matters of public business under the rubric of "Unfinished Business" without a more specific list of anticipated topics to alert citizens what public business might be discussed.

C. Adequacy of Agendas – Executive Sessions

The agendas for the Town Council meetings December 2004 through June 2005 show that the Council went into executive session at the start of each meeting to discuss "Personnel & Legal Issues." You allege that "[t]his vague description is insufficient" to satisfy the public notice requirements of FOIA.

We have previously determined that FOIA's agenda requirements for executive session are less stringent than for the matters to be discussed during the public portion of a meeting. "FOIA 'simply requires public bodies to disclose the purpose of the executive session in the agenda.'" *Att'y Gen. Op.* IB18 (July 8, 2005) (quoting *Common Cause of Delaware v. Red Clay Consolidated School District*, C.A. No. 13798, 1995 WL 733401, at p.4 (Del. Ch., Dec. 5, 1998) (Balick, V.C.)). For example, FOIA does not require the agenda to "specify what legal, personnel or other subjects are discussed in executive session." *Att'y Gen. Op.* IB12 (May 21, 2003) (agenda listing "Executive Session to Discuss Personnel" satisfied the agenda requirements of FOIA). *See also Att'y Gen. Op.* 96-IB27 (Aug. 1, 1996) ("it is not necessary to identify the personnel in convening an executive session to consider personnel matters"); *Att'y Gen. Op.* 99-IB03 (Apr. 28, 1999) (FOIA authorized the town council to meet in executive session to discuss job applicant qualifications (29 *Del. C.* §10004(b)(1); FOIA did not require "the Town to disclose in the agenda the names of applicants for

a job").

The agendas for the meetings of the Town Council from December 2004 through June 2005 listed as the first item of business: "Executive Session (Personnel & Legal Issues)." We believe that is adequate notice under FOIA of the intent to hold an executive session and the matters to be discussed in executive session. Of course, as we determined earlier in this opinion, that does not mean the Council actually discussed the types of personnel and litigation strategy matters that FOIA authorizes for executive session. We determined only that a more detailed explanation of the grounds claimed for executive session in the agenda is not required under FOIA.

D. Procedures For Going Into Executive Session

We have reviewed the minutes of the monthly Town Council meetings from December 2004 through June 2005 for both public portions of the meetings and executive session.

FOIA requires a public body to meet and vote in public to go into executive session prior to meeting in private. *See Att'y Gen. Op. 97-IB19* (Oct. 20, 1997) (council did not vote in public to go into executive session). The minutes of the Town Council's meetings show that it is the regular practice of the Council, under the agenda heading "New Business," to vote in public to go into executive session at the start of the next month's meeting. For example, the minutes of the December 6, 2004 meeting state: "Moved by Mr. Reynolds and seconded by Mr. Faulkner to enter into an Executive Session on January 3, 2005 at 7:00 p.m. Motion carried."

The agenda for the January 3, 2005 meeting listed as the first item of business, "7:00 to 8:00 p.m. Executive Session (Personnel & Legal Issues)." The minutes of the public session of the January 3, 2005 meeting show that at the start of the meeting, Mr. Faulkner made a motion to go into executive session "seconded by Mr. Reynolds to discuss legal and personnel issues."

We are not aware of any other public body that votes at one meeting to go into executive session at a future meeting. FOIA requires a public body to vote in public session to go into executive session so that the public can "see that the public body follows the required procedures for going into executive session." *Att'y Gen. Op.* 02-IB17 (Aug. 6, 2002). While FOIA is silent as to when a public body must hold the vote to go into executive session, we believe that the practice followed by most public bodies -- to vote on the public record immediately prior to going into executive session -- is the process that best protects the intent and purpose of FOIA.

The record shows that at each public meeting (December 2004 through June 2005), the Town Council moved to go into executive session "to discuss legal and personnel issues" and went into executive session immediately following the vote. So long as the executive session for the meeting is properly noticed in the agenda for that meeting, and the Council repeats the vote to go into executive session, then we cannot see how the Town's practice violates FOIA's requirements for going into executive session.

It may be that the clarification and guidance we give in this opinion will assist the Council in deciding when to both notice and utilize FOIA's procedures for going into executive session. The statute's exceptions for executive session are narrow and few. It is unlikely that a public body will know a month in advance what matters may need to be discussed in executive session for a purpose authorized by FOIA. The Town should carefully and timely review the matters it wishes to discuss privately at a meeting and then properly notice the need for an executive session and the specific purpose in the agenda for that meeting.

E. Attendance at Executive Sessions – Public Members

Your complaint questions "the participation and/or spectator attendance of individuals such

as the Town Manager and Chairman of the Board of Adjustment, neither of which are members of the public body of the Mayor & Council, attending Executive Sessions of that public body."

In *Att'y Gen. Op. 02-IB17* (Aug. 6, 2002), we determined that "several of the exceptions for executive session [under FOIA] imply the presence of non-board members (such as attorneys to discuss litigation strategy, or teachers and school administrators in student disciplinary cases). We believe that FOIA allows a public body to invite individuals to attend an executive session to provide information related to the subject matter for which the executive session is authorized." *Att'y Gen. Op. 02-IB17*.

We have reviewed *in camera* the minutes of the executive sessions held by the Town Council from December 2004 through June 2005. The minutes suggest that a number of individuals attended the executive sessions, not to provide information to assist the Council in its private deliberations, but rather as citizens or Town Employees to make a specific request or report to the Council.⁵

When we asked for more specific details of who was in attendance, the Town Solicitor wrote back: "In reviewing the minutes from the January and February executive sessions, the way the minutes are worded, it does suggest that individuals such as Becky Ennis, George Flowers, Alan Johnson, and Danny Wilson were present. However, none of these employees were ever actually present for an executive session. Rather, their names are listed because they were the topic of

⁵ For example, the minutes of the December 6, 2004 minutes state that "Becky Ennis requested . . . Alan Johnson requested . . . ". The February 7, 2005 minutes state that "Morris Deputy reported . . . Rebecca Ennis requested. . . Ed McKnatt requested . . . Cari Price, Kelly Reynolds and Cathy Webber presented . . . Ryan Dashiell requested . . . ". The March 14, 2005 minutes state that "Yahya Faquiri requested . . . Jason Faulkner recommended . . . Jim Reynolds said . . . George Flowers reported . . . ".

discussion as the Council discussed numerous personnel issues."

FOIA requires the minutes of the meeting of a public body to "include a record of those members present." 29 Del. C. §10004(f). The minutes of the Town Council's executive sessions which we have reviewed *in camera* do not list the names of the council members present (though some are referred to by name, for example, in making a motion).

While FOIA refers only to a record of "members" of the public body present, we believe that in order to meet its burden of proof for lawfully meeting in executive session, a public body must disclose any non-members who are present as well. "[A] public body cannot invite non-members as observers, or to participate in the discussion of matters not authorized for executive session. In such a role, the interests of the non-member in attendance are indistinguishable from those of any other member of the public. Their admission to the exclusion of others transforms the so-called executive session into a meeting that must be open to all of the public." *Att'y Gen. Op.* 02-IB17 (Aug. 6, 2002).

The Town Solicitor has represented that "no one other than the Mayor and Council, the Town Manager, myself and Ms. Teel (the Town Secretary) were present during these executive sessions." Based on that representation, we are satisfied that the Town Council did not invite selected members of the public to attend executive sessions. In the future, the Town is cautioned to identify in the minutes of any executive session all persons present, both individual members of the Council and non-members so, if challenged, it can meet its burden of proof on this issue.

Conclusion

For the foregoing reasons, we determine that the Town violated FOIA by denying you access to the minutes of executive sessions held December 2004 through April 2005 because the Town has failed to show either that: (1) the Town Council met in executive session for a purpose authorized by law; or (2) disclosure at this time would defeat the lawful purpose for an executive session authorized by law.

We determine that the Town did not violate the public notice requirements of FOIA by: (1) discussing informational-only matters and hearing comments and questions from citizens during the period of public meetings reserved for "New Business" or "Unfinished Business"; (2) using a short-hand agenda heading ("Personnel" or "Legal Issues") to give notice to the public that the Town Council would meet in executive session and for what purpose; or (3) by voting to go into executive session at the start of the next month's meeting of the Council, so long as the Town properly noticed the executive session in the agenda for the next month's meeting and the Council voted again in public to go into executive session.

As remediation, we direct the Town to provide you with copies of the minutes of the

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executive sessions from December 2004 through April 2005 within twenty days of the date of this letter. We direct the Town Solicitor to report to us in writing within five days after the Town has provided you with those minutes to confirm that the Town has remediated its FOIA violation.

Very truly yours,

W. Michael Tupman
Deputy Attorney General

APPROVED

Malcolm S. Cobin
State Solicitor

cc: The Honorable M. Jane Brady
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